District Court for the City and County of Philadelphia, Oct., 1856.

FAIRGRIEVES *vs.* THE LEHIGH NAVIGATION COMPANY.

1. A partial assignment of a debt, not assented to by the debtor, will not bind the latter at law or in equity, nor deprive him of the right to pay the whole to the assignor, even after notice.
2. The salary of a clerk is not assignable before it is earned, in whole or in part.

This was a motion for judgment on a point reserved at the trial of the case. The facts are fully stated in the opinion of the court, which was delivered by

HARE, J.—This was an action of assumpsit, brought by James Fairgrieves to the use of Susan Erwin, against the Lehigh Navigation Company. The defendants proved a payment in full to Fairgrieves, which was necessarily a bar to the action, unless the company had been deprived of the right to make it by the following agreement between Fairgrieves and Mrs. Erwin, which was produced and proved at the trial:

"I, the undersigned, agree that Mrs. Erwin shall draw from the Lehigh Company fifteen dollars of my pay or salary, (or I to draw it and pay it to her,) on the tenth day of each month, until her debt against me for rent for the house, N. E. corner of Union and Third streets, is satisfied or paid—the first payment to be made 10th of August, 1854.

Signed, J. FAIRGRIEVES."

The question is, whether this instrument operated as an equitable assignment, and precluded the defendants from paying Fairgrieves, after receiving a notice to the contrary from Mrs. Erwin. We are clearly of opinion that it did not, first, because of the partial nature of the assignment, and next on account of the nature of the interest assigned.

Although the authorities are not quite consistent, with regard to the effect of a partial assignment of a chose in action, there are some points which admit of but little difference of opinion. It is plain, both on authority and principle, that an entire cause of action

cannot be split or severed by the act of one party without the consent of the other, and that the powers of an assignee rise no higher in this, or any other particular, than those of the assignor from whom they flow. Hence however varied or numerous the interests which may grow out of transactions between the creditor and third persons, but one action can be brought against the debtor, and he will retain the right to discharge the whole debt by a single payment, without regard to the new and perhaps complicated relations, which have been engrafted upon the simplicity of the original obligation. It is true that both law and equity permit and aid the transfer of a cause of action from one hand to another, when assigned as a whole, and not in parcels or fragments, because this merely shifts the right of the creditor, without varying or impairing the position of the debtor, and simply compels him to make payment to the assignee instead of the assignor. But the case is widely different, when a partial assignment seeks to charge the debtor with the burden of ascertaining the respective shares or equities of the assignor and assignee, and paying each the proportion due to him, at the risk of being made answerable for any mistake by the other. If this were permitted in cases like the present, which are comparatively free from difficulty, it could not be refused in others of a different nature, where the obstacles might be great and perhaps insuperable. If a debt can be divided and thus converted into two distinct obligations, it may equally well be cut up into twenty, each possessed of distinct and separate vitality, and each conferring a right on the holder which would enable him to demand an account and payment.

It was accordingly held by the Supreme Court of the United States in *Mandeville* vs. *Welch*, 5 Wheaton, 279, and by that of Massachusetts in *Gibson* vs. *Clark*, 20 Pick. 15, that a partial assignment of a debt will not bind the debtor either in equity or law, nor deprive him of the right to pay the whole to the assignor, after notice that part has been transferred to the assignee.

A note to the case of *Morton* vs. *Naylor*, 1 Hill, 518, assumes that a different rule prevails in New York, but the cases cited by the annotator are limited to these two points: first, that the assign-

ment of a larger demand as security for the payment of a smaller transfers the whole debt, making the assignee a trustee for the surplus; and next, that the assignment of part of a debt may be rendered valid by the concurrence or assent of the debtor. Both these propositions are unquestionable; and it may be doubted whether there is any case in English or American law which goes beyond them. In *Lett* vs. *Morris*, 4 Simons, 607, an assignment by a contractor, of part of each of the instalments which were to fall due during the erection of a house which he had agreed to build, was indeed held binding on the owner, notwithstanding its partial nature and operation, but then he had assented to it by silence, if not by action, on the one hand, and the assignee had supplied materials to the contractor on the faith of it, on the other. The partial nature of the transfer passed without comment either from the court or counsel, and there are no means of determining whether the failure to notice it arose from oversight, or from an opinion that it formed no obstacle to the recovery of the complainant, and was not worthy of being made the subject of attention. Were this decision more nearly in point than it would seem to be, it could not weigh in this country against that of *Mandeville* vs. *Welch*, which claims our respect from the force of its reasoning, as well as from the high position of the court which pronounced it. In all doubtful questions of general and commercial jurisprudence the State courts should incline to the opinion of the Supreme Court of the United States, from motives of comity and a desire to secure uniformity of decision, as well as from a due regard to the unity and harmony of our existence as a people. The *American Ins. Co.* vs. *Insley*, 7 Barr, 223. We have consequently no hesitation in deciding that an assignment like the present, which attempts to divide an entire cause of action, and thus create a multiplicity of demands out of a single obligation, is not binding on the debtor, and will not deprive him of the right to pay the debt into the hands of the person with whom it was originally contracted. But it may be proper to say, that our decision is strictly limited to the effect of such transactions on the rights of the debtor, and that we do not mean to deny that the assignment of part of a debt may be binding, as between those

who are parties to it, and may entitle the assignee to bring suit in the name of the assignor against a defaulting debtor, because such a course merely calls upon the latter to pay the debt, without making him responsible for the appropriation of the money after it is paid. But this is obviously a very different thing from compelling a debtor who is ready and willing to meet his obligations, to undergo the risk and trouble of investigating transactions to which he is a stranger, and incurring new responsibilities in the performnnce of an act which ought to free him from all charge or liability. The burden of the introduction of a stranger into the relation between debtor and creditor, is sufficiently onerous, when the whole debt is assigned, and would be intolerable if partial assignments were permitted.

Were this, however, less clear than it would seem to be, there would still remain a formidable objection to the title of the assignee, growing out of the nature of the right assigned. This consisted in the salary of the assignor, as clerk of the defendants, before it was earned, and while it was yet a mere contingency depending on his willingness to serve them, and theirs to employ and pay him. The interest assigned was, therefore purely contingent, and depended for its existence not only upon the will of the assignor, but on that of the company, who might have discharged him from their employment, and thus rendered the claim of the assignee wholly nugatory. The case of *Lunn* vs. *Thornton*, 1 C. B. 379; *Gale* vs. *Burnell*, 7 Q. B. 850; and *Winslow* vs. *The Merchants' Ins. Co.*, 4 Metcalf, 306, establish that no grant or transfer can be good at law, unless the right or title granted have some actual existence; it need not be vested in possession, or even in interest, but it must have a real foundation in the past or present, and not depend wholly upon purpose or intention. On the other hand, *Mitchell* vs. *Winslow* 2 Story 630; *Field* vs. *The Mayor of New York*, 2 Selden, 179; *Langdon* vs. *Horton*, 1 Hare, 549, and *Calkins* vs. *Lockwood*, 16 Con. 276, seem to show what indeed can hardly be doubted, that a transfer which fails as a gift or grant, for want of a present interest, may, notwithstanding, be specifically enforced as an executory contract. But however this may be, it is certain that the assistance of equity in this, as in all other cases of specific performance, is discretionary,

and will not be afforded unless the circumstances of the case are such as to justify and demand it. This distinction pervades the whole field of equitable jurisprudence, and separates it from that of law where jurisdiction is imperative, and the ill use which may be of a remedy, no excuse for withholding it.

The discretion of a chancellor is indeed controlled by precedent, and guided by maxims and principles; but it is not the less a discretion. This is emphatically true when, as in the present instance, the aid of equity is invoked to overrule legal rights, in order to give effect to interests which the law does not recognize. The legal operation of the paper signed by the defendant, is at most that of a draft or order; we are asked to convert it into an irrevocable transfer of the proceeds of his future labor. If the wages of toil can be pledged before they are earned, for the payment of debts, or for the purpose of obtaining credit; if the creditor can step in and intercept them in their passage from the hand of the employer to that of the workman, in what will the condition of the debtor differ from that of a slave? His life and limbs may still be his own, but the right to use them for his own benefit will be at an end, or subject to the control of another. It is true that the transfer now in question, is limited to what might be earned in the service of a particular master. But if equity will sustain and enforce such transactions in any case, it must be prepared to do so in all. The assignment of wages earned in a specific service or employment, may injure one party without benefiting the other, by inducing the assignor to abandon a good situation and seek another less advantageous, but where what he makes will at least be his own. But an assignment of all that the assignor may subsequently earn anywhere, would, at the worst, have the merit of giving the assignee a security on which he might rely with some confidence, unless its effect in depriving effort of its reward, and holding out a motive for idleness, should induce the conclusion, that what destroys hope and fetters exertion, must cause too much ill to be easily productive of good.

No case has been cited which in any way sanctions the idea, that equity will lend its assistance for such a purpose; while there are many which tend to show that no man can be deprived of the right

to devote the proceeds of his labor to his own support and that of those dependent on him, either by his own act or by that of the law. Thus it is well known that the assignment of a bankrupt, goes farther under the English statutes than any transfer which derives its force wholly from his own act or agreement, and yet it is thoroughly well settled, that although the assignees are entitled to every right which accrues to the bankrupt subsequently, however remote or contingent, they cannot claim the fruits of his personal services, and thus deprive him of the means of gaining a livelihood by the efforts of industry or the exercise of skill. The point has been so held in a series of cases, beginning with *Chippendall* vs. *Tomlinson*, 4 Douglass 318, and coming down to *Williams* vs. *Chambers*, 10 Q. B. 337. "It is," said Lord Mansfield, in *Chippendall* vs. *Tomlinson*, "a question of terrible importance, for what is to become of the bankrupt if he cannot earn a maintenance by his daily labor?" The question put by his lordship on that occasion may well be repeated here, where we are asked to establish a precedent which would certainly end in creating the evil which he deprecated. Want, which is ever the parent of that indifference to the future, of which it is generally the offspring, is always ready to sacrifice every thing to the present, which can mitigate its demands and secure a temporary exemption from suffering. What the plaintiff did in this case, under its influence, others would do again in favor of creditors less deserving than Mrs. Erwin, and labor would be subjected to incumbrances equally prejudicial to itself and to the community.

The remarks which have been made, may suffice to show the consequences of sustaining such assignments to the parties, but it may be well to add a few words on the effect which it would have on third persons, and the course of proceeding in which it would involve the courts. Nothing could be more useless than to hold an assignment of future wages valid, and yet leave it to the choice of the assignor whether the work shall be done, for this would be to decide in favor of a right, and then make it dependent on the caprice or will of the person who created it. If such transfers are to be upheld and enforced, they must be treated as contracts between the assignor and assignee, and compelled the assignor to do all that is necessary to render them effectual. The spirit, if not the letter of

an assignment of the salary of a clerk, or the wages of a laborer, is that the person who executes it will go on and do the work, or render the services, which are necessary to call the interest assigned into being. Hence the intervention of equity to be really effectual must go to the length of enforcing the performance of the task which the assignor has impliedly promised to accomplish, and prohibiting its interruption, until the assignee has obtained full satisfaction. And even if such a decree were made and enforced, it might still be frustrated by the refusal of the employer to permit the work to be done or the services rendered. The difficulty, or rather the impossibility of doing this, and the mischief which it would produce if done, are too plain for comment, and render further argument superfluous. We do not think it necessary to pursue the subject further, and enter judgment for the defendants on the point reserved. Judgment for defendants.

In the Court of Quarter Sessions of Philadelphia County—November, 1856.

COMMONWEALTH *vs.* ANDREW B. FRAZEE.

1. A State may waive its right to exercise judicial authority over portions of its territory.

2. By the agreement between the States of Pennsylvania and New Jersey made in 1783, the juridical investigation and determination of criminal offences committed on the river Delaware are specially provided for, and is exclusive, no other court having cognizance of such offences except as provided by this agreement and subsequent Acts of Assembly.

3. A defendant cannot be called upon to answer two distinct tribunals for the same offence.

THOMPSON, P. J.—The defendant, by his pleas, denies the right of the Court of Oyer and Terminer of the county of Philadelphia, to entertain jurisdiction of the offence charged in the indictment, for the reason that prior to the commencement of the prosecution in this county, he had been been arrested and prosecuted for the same offence in the State of New Jersey, which said State had then the exclusive jurisdiction over the offence alleged to have been committed by him.